ty unless his risk is thereby increased. *Mount* v. *Tappey*, 70 Ky. (7 Bush) 617; *First Nat. Bank of Columbus* v. *Garlinghouse*, 22 Ohio St. 492; *Samuel* v. *Withers*, 16 Mo. 532; *Davis* v. *Converse*, 35 Vt. 503. Where the interest only of a usurious note is avoided the surety is still bound for the principal. *Mitchell* v. *Cotten*, 3 Fla. 134. § 2888 of the Georgia code provides that if the statute against usury is violated the excess interest shall be forfeited. The note is not void. *Partridge* v. *Williams' Sons*, 72 Ga. 807. But "homestead is favored by the law and usury is odious to the law. For reasons of public policy no waiver of homestead can be effectual where the consideration has any taint of usury." *Tribble* v. *Anderson*, 63 Ga. 31. Therefore it is apparent that the surety in the principal case would not necessarily have been discharged had it not been for this homestead waiver, and the case is interesting for this reason. This principle has been established by a line of cases in Georgia, and there should have been very little doubt as to the principal case. The following are the decisions: *Small* v. *Hicks*, 81 Ga. 691; *Harrington* v. *Findley*, 89 Ga. 385; *Lewis* v. *Brown*, 89 Ga. 115; *Howard* v. *Johnson*, 91 Ga. 319; *Vandiver* v. *Wright*, 94 Ga. 698; *Allen* v. *Wilkerson*, 99 Ga. 139; *Denton* v. *Butler*, 99 Ga. 264, and *Prather* v. *Smith*, 101 Ga. 283, which involved the mere inchoate right of homestead, and therefore very slight chance of actual loss. Three of the former are cited in the principal case and the latter especially relied upon. But the case of *Weldon* v. *Ayers*, 116 Ga. 181 is not mentioned although it apparently announces a different rule. In that case, under facts practically the same as those of the principal case, it was held that the surety is not altogether discharged from liability, but by a proper plea (setting up the exact amount of the usury so that it may be set off) he may prevent a greater recovery than the principal and legal interest. But the plea of usury that was interposed evidently did not set up the fact of homestead waiver with enough certainty to bring the question before the court, and as the usurious amount was not definitely stated, on certiorari the judgment for the full amount was sustained. Accordingly the principal case is correct in law and theory.

PUBLIC OFFICERS—REMOVAL—REAPPOINTMENT.—The defendant was elected president of the borough of Manhattan for a term of four years. The Charter of the City of New York provides that in proper proceedings the governor may remove the president of a borough for cause and that the vacancy thereby created shall be filled by appointment of the board of aldermen of the city of New York, representing the borough wherein the vacancy occurs. The defendant being removed in due course for maladministration of office and incompetency, the aldermen representing Manhattan borough reappointed him to fill the vacancy created by his removal. In an action of quo warranto against the reappointed borough president, it was *held*, (CULLEN, C. J., and CHASE, J., dissenting), that the removal disqualified the defendant for the remainder of the unexpired term and that his subsequent appointment was void. *People* v. *Ahearn* (1909), — N. Y. —, 89 N. E. 930.

This case presents a question which has been rarely before the courts of the United States, yet often enough to disclose a conflict of opinion. The

following authorities support the conclusion of the principal case: *State* v. *Dart,* 57 Minn. 261; *State* v. *Rose,* 74 Kan. 262; *In re Opinion,* 31 Fla. 1, and see *State* v. *Welsh,* 109 Iowa, 19; contra, *State* v. *Common Council,* 25 N. J. Law 536. Dissenting from the majority of the court in the New York case, CULLEN, C. J., reaches a conclusion to which we are inclined as a matter of law. As it appears, the law does not make such a removal a disqualification for the office of borough president or for any other office. Likewise, the law gives the absolute power of appointment to the aldermen of the borough. CULLEN, C. J., says: "It is for the legislature to say how far it is necessary in particular cases, to limit the power of appointment of the members of the council, or punish particular offenses, and not for the courts." Addressing his attention to the question of public policy, he continues: "I appreciate the force of the arguments against allowing an officer who has been removed from office to be again elected or appointed thereto. They are cogent; but they should be addressed to the legislature, not to the courts."

SALES—CONDITIONAL SALES—WAIVER OF STATUTORY RIGHT—ESTOPPEL.—Plaintiff contracted to purchase a cab and harness from the defendants on monthly installments, the payments to be considered as rent until the payment of the final installment. On default of any payment the defendants might retake the property in question. The plaintiff defaulted and permitted the defendants to retake the property. A statute provided that upon a conditional sale, where the articles are retaken by the seller, he shall retain them for thirty days, during which the buyer may comply with his contract and regain possession; but if the buyer does not comply, the vendor may sell the articles at public auction, and unless the goods are so sold within thirty days, the buyer may recover the amount paid by him. Defendants failed to sell within the time provided, and the plaintiff sued to recover the amounts paid. *Held,* plaintiff waived his rights under the statute, and was estopped from asserting that the defendants should have sold the property, as if they had taken it against his will. (INGRAHAM and SCOTT, JJ., dissenting.) *Fairbanks* v. *Nichols et al.* (1909), 119 N. Y. Supp. 752.

By default in payment and surrender of the property, the terms of the contract apply and the amount paid is to be considered as rent. *Wheeler & Wilson Mfg. Co.* v. *Jacobs,* 2 Misc. Rep. 236, 21 N. Y. Supp. 1006; *Tufts* v. *D'Arcambal,* 85 Mich. 185, 48 N. W. 497, 12 L. R. A. 446. The court considers the voluntary surrender of the property by the plaintiff as disposing of all question of a conditional sale, and as a waiver of rights under a statute designed to protect vendees from unjust powers exercised by vendors. *Woodman* v. *Needham Piano Co.,* 47 Misc. Rep. 683, 94 N. Y. Supp. 371. Having waived his rights under the statute, he is now estopped from claiming its benefits. The minority opinion considers it a conditional sale, under ch. 418, p. 541, of the laws of 1897, amended by ch. 762, p. 1624, of the laws of 1900 which give the plaintiff a right of recovery, for "if the so-called 'rent' had been paid, the title would have vested in the plaintiff."

TELEGRAPHS AND TELEPHONES—RIGHT OF FOREIGN CORPORATION TO DO BUSINESS.—Plaintiff is a New York corporation authorized to carry on a